

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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COURCHEVEL 1850 LLC,

17-00785 (JBW)(SMG)

Plaintiff

-against-

MOHAMMED ALAM, KOZNITZ I LLC, UNITED
STATES OF AMERICA (INTERNAL REVENUE
SERVICE), NY STATE DEPARTMENT OF TAXATION
AND FINANCE; CITIBANK, N.A.; CITIBANK (SOUTH
DAKOTA) NEW YORK CITY ENVIRONMENTAL
CONTROL BOARD; NEW YORK CITY TRANSIT
ADJUDICATION BUREAU; NEW YORK CITY
PARKING VIOLATIONS BUREAU,

Defendants.

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**MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT’S MOTION FOR THE
APPOINTMENT OF A RECEIVER**

SOLOMON ROSENGARTEN (SR-8050)
Attorney for Defendant
Koznitz I LLC
1704 Avenue M
Brooklyn, New York 11230
(718) 627-4460
vokma@aol.com

POINT I

PLAINTIFF IS NOT ENTITLED TO THE APPOINTMENT OF A RECEIVER

The plaintiff's motion is predicated a provision of the mortgage which entitle the mortgagee to have a Receiver appointed. The mortgage is presently owned by Nationstar Mortgage LLC (Exhibit "A" to Declaration in Opposition). Since plaintiff does not hold the mortgage, it cannot invoke the provision in the mortgage instrument which allows the appointment of a Receiver. It is well settled that a plaintiff in a foreclosure action has standing "where it is both the holder and assignee of the subject mortgage and the holder or assignee of the underlying note at the time the action is commenced. Bank of New York v. Silverberg, 86 A.D.3d 274, 279 (NY 2nd Dept. 2011); Countrywide Home Loans Inc. v. Gress, 68 A.D.3d 709, 710 (NY 2nd Dept. 2009). Since the plaintiff does not hold the mortgage, it is not entitled to the appointment of a Receiver.

Moreover, even if the owner of the note, which does not possess the mortgage, would be entitled to the appointment of a Receiver, defendant submits that plaintiff has not established that it holds the note (see defendant's cross-motion to dismiss and/or summary judgment - ECF Doc. Nos. 45, 47 and 48).

If the plaintiff is not the owner of the Note, it would not have standing to prosecute the instant action and would not have the right to have a Receiver appointed.

Therefore, if the Court does not agree with defendant that the plaintiff is not entitled to a Receiver because it does not hold a mortgage, it should not render a decision on the instant

motion until it decides defendant's cross-motion.

Dated: December 18, 2018

Solomon Rosengarten

SOLOMON ROSENGARTEN (SR-8050)